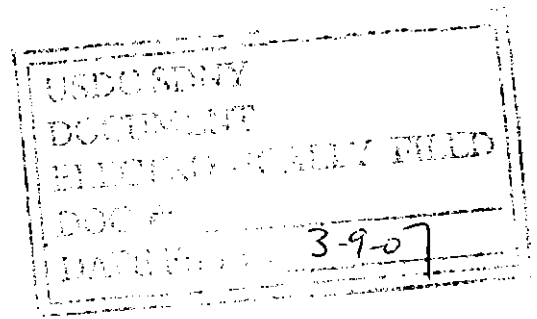


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



IN RE:

FOSAMAX PRODUCTS LIABILITY LITIGATION

This Document Relates To All Actions

MASTER FILE

1:06-MD-1789 (JFK)

**JOINT PROPOSED AMENDED CASE MANAGEMENT ORDER NO. 10
(EARLY TRIAL SELECTION PROCESS)**

The Court orders that Paragraph 1 of Case Management Order No. 10 (entered on January 30, 2007), is hereby amended to include in the universe of cases to be considered for the initial trials only those cases listed on the attached Schedule A, which includes claims brought by plaintiffs that have been filed directly into or transferred to MDL-1789 on or prior to November 7, 2006 and involve only Merck & Co., Inc. as a defendant. Further, it is ordered that the initial trials shall involve only the individual plaintiff's claims and not any class issues.

SO ORDERED.

Dated: New York, New York

~~February~~ __, 2007

A handwritten signature in black ink, appearing to be "M. ...", written over the date line.

A large, stylized handwritten signature in black ink, reading "John F. Keenan".

JOHN F. KEENAN
UNITED STATES DISTRICT JUDGE

Attachment

Schedule A to Joint Proposed Amended Case Management Order No. 10


	Plaintiff Name	Case Name	MDL-1789 Docket No.
1	Allen, Fredericka	<i>Allen v. Merck & Co., Inc.</i>	1:06-cv-09452-JFK
2	Bergeson, Virginia	<i>Bergeson v. Merck & Co., Inc.</i>	1:06-cv-09454-JFK
3	Boles, Emma EXCLUDED	<i>Boles, E. v. Merck & Co., Inc.</i>	1:06-cv-11330-JFK
4	Boles, Shirley	<i>Boles, S. v. Merck & Co., Inc.</i>	1:06-cv-09455-JFK
5	Boniol, Sandra EXCLUDED	<i>Boniol v. Merck & Co., Inc.</i>	1:06-cv-12968-JFK
6	Carr, Carmen	<i>Carr v. Merck & Co., Inc.</i>	1:06-cv-07628-JFK
7	Chadirjian, Helen	<i>Chadirjian v. Merck & Co., Inc.</i>	1:06-cv-11343-JFK
8	Cohn, Sylvia	<i>Cohn v. Merck & Co., Inc.</i>	1:06-cv-11454-JFK
9	Davis, Deborah	<i>Davis v. Merck & Co., Inc.</i>	1:06-cv-09461-JFK
10	De La Fuente, Jo Anne Gladin	<i>De La Fuente v. Merck & Co., Inc.</i>	1:06-cv-03131-JFK
11	Dengel, Suzanne	<i>Dengel v. Merck & Co., Inc.</i>	1:06-cv-00372-JFK
12	DeVivo, Mary	<i>DeVivo v. Merck & Co., Inc.</i>	1:06-cv-04107-JFK
13	Edwards, Dorothy R.	<i>Edwards v. Merck & Co., Inc.</i>	1:06-cv-06293-JFK
14	Evans, Avril	<i>Evans v. Merck & Co., Inc.</i>	1:06-cv-00979-JFK
15	Fleming, Bessie L.	<i>Fleming v. Merck & Co., Inc.</i>	1:06-cv-07631-JFK
16	Graves, Judith	<i>Graves v. Merck & Co., Inc.</i>	1:06-cv-05513-JFK
17	Greene, Karen Denise	<i>Greene, K. v. Merck & Co., Inc.</i>	1:06-cv-05088-JFK
18	Greene, Ronna	<i>Greene, R. v. Merck & Co., Inc.</i>	1:06-cv-09449-JFK
19	Grizzell, Nealie	<i>Grizzell v. Merck & Co., Inc.</i>	1:06-cv-09459-JFK
20	Groner, Harriett P.	<i>Groner v. Merck & Co., Inc.</i>	1:06-cv-11455-JFK
21	Harrison, Ramon L.	<i>Harrison v. Merck & Co., Inc.</i>	1:06-cv-00365-JFK
22	Harth, Margaret "Peggy"	<i>Harth v. Merck & Co., Inc.</i>	1:06-cv-00361-JFK
23	Hennrich, Linda F.	<i>Hennrich v. Merck & Co., Inc.</i>	1:06-cv-02274-JFK
24	Hester, Carolyn	<i>Hester v. Merck & Co., Inc.</i>	1:06-cv-09450-JFK
25	Johnson, Karen	<i>Johnson v. Merck & Co., Inc.</i>	1:06-cv-09448-JFK
26	Kincaid, Patricia J.	<i>Kincaid v. Merck & Co., Inc.</i>	1:06-cv-03815-JFK
27	Kligerman, Irene	<i>Kligerman v. Merck & Co., Inc.</i>	1:06-cv-05515-JFK
28	Maley, Louise H.	<i>Maley v. Merck & Co., Inc.</i>	1:06-cv-04110-JFK
29	McClellan, Marsha Lynn	<i>McClellan v. Merck & Co., Inc.</i>	1:06-cv-08300-JFK
30	Moore, Sherri	<i>Moore v. Merck & Co., Inc.</i>	1:06-cv-03814-JFK
31	Napier, James	<i>Napier v. Merck & Co., Inc.</i>	1:06-cv-09451-JFK
32	Purdy, Jennie	<i>Purdy v. Merck & Co., Inc., et al.</i>	1:06-cv-12969-JFK
33	Raisor, Joyce	<i>Raisor v. Merck & Co., Inc.</i>	1:06-cv-07630-JFK
34	Rhyne, Margaret	<i>Rhyne v. Merck & Co., Inc.</i>	1:06-cv-09460-JFK
35	Richardson, Mary	<i>Richardson v. Merck & Co., Inc.</i>	1:06-cv-09458-JFK
36	Sagrillo, Willie	<i>Sagrillo v. Merck & Co., Inc.</i>	1:06-cv-05518-JFK
37	Sargent, Clina V.	<i>Sargent v. Merck & Co., Inc.</i>	1:06-cv-05086-JFK
38	Secrest, Linda	<i>Secrest v. Merck & Co., Inc.</i>	1:06-cv-06292-JFK
39	Startt, Dolores	<i>Startt v. Merck & Co., Inc.</i>	1:06-cv-06294-JFK
40	Stephens, Una Beth EXCLUDED	<i>Stephens v. Merck & Co., Inc.</i>	1:06-cv-09457-JFK

41	Toelke, Kathleen	<i>Toelke v. Merck & Co., Inc.</i>	1:06-cv-07629-JFK
42	Trahan, Aline	<i>Trahan v. Merck & Co., Inc.</i>	1:06-cv-09456-JFK
43	Tucker, Kim H.	<i>Tucker v. Merck & Co., Inc.</i>	1:06-cv-11456-JFK
44	Vandercar, Reyna	<i>Vandercar v. Merck & Co., Inc.</i>	1:06-cv-11329-JFK
45	Wade, Nellie	<i>Wade v. Merck & Co., Inc.</i>	1:06-cv-09453-JFK
46	Williams, Richard	<i>Williams v. Merck & Co., Inc.</i>	1:06-cv-11493-JFK
47	Wolfe, Gwendolyn	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK
48	Nichols, Trent	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK
49	Raber, Sarah	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK
50	Smith, Carol	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK
51	Lopreato, Carolyn	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK

Stipulated Waiver of Right to Transfer Venue


Pursuant to Case Management Order No. 10, it is hereby agreed by the undersigned parties, that the parties waive any right to object to transfer of their case for trial purposes to *In re Fosamax Products Liability Litigation*, MDL-1789, pending in the Southern District of New York before Hon. John F. Keenan, in accord with the decision by the United States Supreme Court in *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998), in the cases listed on Appendix A attached hereto.

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Appendix A to Stipulated Waiver of Right to Transfer Venue

	Plaintiff Name	Case Name	MDL-1789 Docket No.
1	Allen, Fredericka	<i>Allen v. Merck & Co., Inc.</i>	1:06-cv-09452-JFK
2	Bergeson, Virginia	<i>Bergeson v. Merck & Co., Inc.</i>	1:06-cv-09454-JFK
3	Boles, Shirley	<i>Boles, S. v. Merck & Co., Inc.</i>	1:06-cv-09455-JFK
4	Carr, Carmen	<i>Carr v. Merck & Co., Inc.</i>	1:06-cv-07628-JFK
5	Chadirjian, Helen	<i>Chadirjian v. Merck & Co., Inc.</i>	1:06-cv-11343-JFK
6	Cohn, Sylvia	<i>Cohn v. Merck & Co., Inc.</i>	1:06-cv-11454-JFK
7	Davis, Deborah	<i>Davis v. Merck & Co., Inc.</i>	1:06-cv-09461-JFK
8	De La Fuente, Jo Anne Gladin	<i>De La Fuente v. Merck & Co., Inc.</i>	1:06-cv-03131-JFK
9	Dengel, Suzanne	<i>Dengel v. Merck & Co., Inc.</i>	1:06-cv-00372-JFK
10	DeVivo, Mary	<i>DeVivo v. Merck & Co., Inc.</i>	1:06-cv-04107-JFK
11	Edwards, Dorothy R.	<i>Edwards v. Merck & Co., Inc.</i>	1:06-cv-06293-JFK
12	Evans, Avril	<i>Evans v. Merck & Co., Inc.</i>	1:06-cv-00979-JFK
13	Fleming, Bessie L.	<i>Fleming v. Merck & Co., Inc.</i>	1:06-cv-07631-JFK
14	Graves, Judith	<i>Graves v. Merck & Co., Inc.</i>	1:06-cv-05513-JFK
15	Greene, Karen Denise	<i>Greene, K. v. Merck & Co., Inc.</i>	1:06-cv-05088-JFK
16	Greene, Ronna	<i>Greene, R. v. Merck & Co., Inc.</i>	1:06-cv-09449-JFK
17	Grizzell, Nealie	<i>Grizzell v. Merck & Co., Inc.</i>	1:06-cv-09459-JFK
18	Groner, Harriett P.	<i>Groner v. Merck & Co., Inc.</i>	1:06-cv-11455-JFK
19	Harrison, Ramon L.	<i>Harrison v. Merck & Co., Inc.</i>	1:06-cv-00365-JFK
20	Harth, Margaret "Peggy"	<i>Harth v. Merck & Co., Inc.</i>	1:06-cv-00361-JFK
21	Hennrich, Linda F.	<i>Hennrich v. Merck & Co., Inc.</i>	1:06-cv-02274-JFK
22	Hester, Carolyn	<i>Hester v. Merck & Co., Inc.</i>	1:06-cv-09450-JFK
23	Johnson, Karen	<i>Johnson v. Merck & Co., Inc.</i>	1:06-cv-09448-JFK
24	Kincaid, Patricia J.	<i>Kincaid v. Merck & Co., Inc.</i>	1:06-cv-03815-JFK
25	Kligerman, Irene	<i>Kligerman v. Merck & Co., Inc.</i>	1:06-cv-05515-JFK
26	Maley, Louise H.	<i>Maley v. Merck & Co., Inc.</i>	1:06-cv-04110-JFK
27	McClellan, Marsha Lynn	<i>McClellan v. Merck & Co., Inc.</i>	1:06-cv-08300-JFK
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29	Napier, James	<i>Napier v. Merck & Co., Inc.</i>	1:06-cv-09451-JFK
30	Purdy, Jennie	<i>Purdy v. Merck & Co., Inc., et al.</i>	1:06-cv-12969-JFK
31	Raisor, Joyce	<i>Raisor v. Merck & Co., Inc.</i>	1:06-cv-07630-JFK
32	Rhyne, Margaret	<i>Rhyne v. Merck & Co., Inc.</i>	1:06-cv-09460-JFK
33	Richardson, Mary	<i>Richardson v. Merck & Co., Inc.</i>	1:06-cv-09458-JFK
34	Sagrillo, Willie	<i>Sagrillo v. Merck & Co., Inc.</i>	1:06-cv-05518-JFK
35	Sargent, Clina V.	<i>Sargent v. Merck & Co., Inc.</i>	1:06-cv-05086-JFK
36	Secrest, Linda	<i>Secrest v. Merck & Co., Inc.</i>	1:06-cv-06292-JFK
37	Startt, Dolores	<i>Startt v. Merck & Co., Inc.</i>	1:06-cv-06294-JFK
38	Toelke, Kathleen	<i>Toelke v. Merck & Co., Inc.</i>	1:06-cv-07629-JFK
39	Trahan, Aline	<i>Trahan v. Merck & Co., Inc.</i>	1:06-cv-09456-JFK
40	Tucker, Kim H.	<i>Tucker v. Merck & Co., Inc.</i>	1:06-cv-11456-JFK
41	Vandercar, Reyna	<i>Vandercar v. Merck & Co., Inc.</i>	1:06-cv-11329-JFK

42	Wade, Nellie	<i>Wade v. Merck & Co., Inc.</i>	1:06-cv-0453-JFK
43	Williams, Richard	<i>Williams v. Merck & Co., Inc.</i>	1:06-cv-11493-JFK
44	Wolfe, Gwendolyn	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK
45	Nichols, Trent	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK
46	Raber, Sarah	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK
47	Smith Carol	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK
48	Lopreato, Carolyn	<i>Wolfe, et al. v. Merck & Co., Inc.</i>	1:06-cv-06295-JFK

February 27, 2007

VIA OVERNIGHT MAIL

FEB 28 2007

Hon. John F. Keenan
United States District Judge
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street, Room 1930
New York, New York 10007-1312

Re: *In re Fosamax Products Liability Litigation*, CA No. 06-MD-1789 (JFK)

Dear Judge Keenan:

We write jointly on behalf of Defendant Merck & Co., Inc. ("Merck") and the Plaintiffs' Steering Committee ("PSC") to inform the Court that following the Court's issuance of Case Management Order No. 10¹ on the early trial selection process (the "Order"), the parties conferred regarding the universe of cases eligible for early trial selection and now respectfully submit a Joint Proposed Amended Case Management Order No. 10 regarding these cases (attached hereto as Exhibit 1).

First, both sides have agreed, subject to the Court's approval, that the universe of initial trial cases should not include any case involving multiple pharmaceutical defendants. This was an issue that the parties had discussed and agreed to prior to the Court issuing the Order; however, the parties now realize that they did not make this point clear to the Court prior to the Court issuing the Order. In the context of initial trials in these MDL proceedings, the parties believe that trials involving only Merck as a defendant best serve the interests of justice and the reasons behind setting initial trial cases.

Second, because the parties propose eliminating the fourteen cases that involve pharmaceutical defendants other than Merck from the trial selection pool, the parties have agreed that it would be most consistent with the Court's remarks at the last conference to expand the time frame in which the Court would include cases in the initial pool to capture a similar number of cases as were previously included in the Order. Therefore, the parties propose including cases that have been filed directly into or transferred to MDL-1789 on or prior to *November 7, 2006*.

¹ We are referring to the CMO entered on January 30, 2007, which was originally incorrectly entered as CM09.

This would include cases transferred to this Court through the entry of CTO 6, including cases filed directly in this Court during this time.

Third, the parties propose excluding any class claims from the initial trial cases. In so excluding the class issues and trying only individual plaintiff's claims against Merck, the parties have included separately all five of the plaintiffs in *Wolfe, et al. v. Merck & Co., Inc.*, C.A. No. 1:06-cv-6295 on the list of cases attached to the proposed amended order. Additionally, the parties have excluded one case that might otherwise be included – *Emma Boles v. Merck & Co., Inc.*, C.A. No. 1:06-cv-336. This case will not be considered for an early trial because an extension of time to file a Plaintiff Profile Form has been granted beyond the February 19, 2007 due date.

Finally, the parties submit a Stipulated Waiver of Right to Transfer Venue (attached hereto as Exhibit 2) which the parties have signed as a formal acknowledgement of the *Lexecon* waivers required by CMO 10. *Lexecon* waivers have been agreed to in all cases represented by the PSC that are eligible for early trial selection. Of the three eligible cases not represented by the PSC – *Boniol v. Merck & Co., Inc.*, C.A. No. 1:06-cv-12968; *Raisor v. Merck & Co., Inc.*, C.A. No. 1:06-cv-7630; and *Stephens v. Merck & Co., Inc.*, C.A. No. 1:06-cv-9457 – only the Plaintiff in *Raisor* has agreed to the *Lexecon* waiver. Accordingly, *Boniol* and *Stephens* are also excluded from the potential early trial pool.

If the Court has any questions or seeks further clarification on these issues, we are available to discuss.

Respectfully submitted,



Cecily C. Williams

Attachments (Ex. 1. Joint Proposed Amended Case Management Order No.10)
(Ex. 2. Stipulated Waiver of Right to Transfer Venue)

cc: Plaintiffs' Steering Committee
Paul F. Strain
M. King Hill, III
David J. Heuback
Norman C. Kleinberg
Theodore V. H. Mayer
William J. Bcausoleil